hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CENTRAL EXCISE APPEAL NO. 217 OF 2006

M/s. Shama Fireworks Industries ... Appellant

Versus

Commissioner of Central Excise ... Respondent

ALONG WITH
CENTRAL EXCISE APPEAL NO. 45 OF 2007

Vishan S. Milwani ... Appellant

Versus

Commissioner of Central Excise ... Respondent

Mr. Naresh Thacker with Ms. Aarti Sathe i/by Mr.M.R. Baya for the Appellant in both appeals.

Mrs. S.V. Bharucha with Mr. N.D. Sharma i/by H.R. Chaturvedi for Respondent in Central Excise Appeal No. 217 of 2006.

Mrs. S.V. Bharucha with Mr. Y.R. Mishra and Mr. O.A. Dubey i/by H.P. Chaturvedi for Respondent in Central Excise Appeal No. 45 of 2007.

CORAM: F.I. REBELLO &
R.V. MORE, JJ.
DATED: JULY 06, 2007

P.C.:

. This appeal is directed against the order No. A/790-791/WZB/06-C-II/EB dad 10/25.04.2006 passed by the Customs Excise and Service Tax Appellate Tribunal in Appeal Nos. E/1493/2000-MUM and E/1494/2000-MUM arising out of Order-in-Original No. 4/CEX/2000 dated 15.02.2000. The learned tribunal disposed of both the appeals by a common order.

After considering the contentions advanced on behalf of the appellants and respondents, the reasons for dismissing the appeals are recorded in Para 14 of the impugned order. The learned tribunal firstly recorded a finding that the appellants had admitted clandestine removal of goods without any reservation in their statement which have not been retracted till date. The duty was paid immediately on detection without any word of protest and even though another statement was recorded in June, 1998, no protest letter was lodged. The reply to show cause notice was submitted after one year and in between also the appellants never took a plea that the goods were never removed and that the orders relating to them were cancelled. Even in the reply to the show cause notice, or in the grounds of appeals, they have not stated that the statement given by the partner was under coercion or force or that they were incorrect.

(2) On the contention that the orders were cancelled, the tribunal held that the plea regarding cancellation of order could have easily been taken during the course of investigation when statements were recorded and the matter could have been verified. The tribunal noted that the Commissioner in his finding has stated that the goods corresponding to the packing slip and lorry receipt

were not found either in factory premises or the duty paid godown and the appellants have not taken any objection to the same in their written submission.

(3) The tribunal further recorded that the conduct of the appellants had been fraudulent in as much as in respect of the shortages in the finished stock and the duty paid godown, the matter has not been contested and it was clear cut case of removal without payment of duty detected by the officers when a full truck load of fireworks were intercepted without any duty paying documents and the appellants have failed to produce any duty paying documents relating to them till today. The tribunal further recorded that the packing slips were duly signed by the partners and contain all details including vehicle number and therefore, they were more in the nature of delivery slip rather than packing slips. Similarly lorry receipt bear signature in most cases of the consignee in token of having received the goods and also admitted by the partner in his statement.

. At the hearing of these appeals, the learned counsel contends that several substantial questions of law arises. It may be pointed out that the appeal memo as earlier filed was amended and

substituted by a new Paragraph No. 1 which contains the questions formulated in grounds A to I.

. In our opinion, these questions are purely academic in nature considering the findings recorded by the Commissioner of Central Excise and Customs and concurrent finding by the tribunal. In the instant case, the statement of the partner was recorded and as held by the tribunal the statement was not retracted. A vehicle was attached carrying the goods of which duty was not paid. The argument now advanced that the appellant had no capacity and could not have manufactured the quantity of goods must be rejected considering the clandestine removal of goods and the way the appellants were operating. In this aspect of the matter, in our opinion, whether the appellants could manufacture the clandestine goods are not questions to be gone into. The learned counsel also drew our attention to the judgment in the case of the Commissioner of C. Ex. Chandigarh Vs. Raja and Sandeep Ltd. 2004 (168) EL.T. 307 (P.& H.) to contend what would be substantive question of law that could be formulated. Next reliance is placed in the judgment of the K.I. Pavunny Versus Asst. Collr (Hq.) C.Exh. Collectorate, Cochin 1997 (90) E.L.T. 241 (S.C.) to contend that the confessional statement itself cannot be the basis for holding the

appellants guilty of the acts committed. It may be seen that those observations were made in the context of the criminal proceedings which was the issue before the Supreme Court. In the instant case, these are the proceedings for adjudication and therefore, the test applied in that case would not apply in these proceedings. In the light of that, there is no merit in this appeal. Both Appeals accordingly dismissed.

(R.V. MORE,J.) **(F.I. REBELLO,J.)**